

EXHIBIT 1:
DECLARATION OF JOSE MONTES, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JOSE MONTES, JR., ON BEHALF OF §
HIMSELF AND ALL OTHERS §
SIMILARLY SITUATED, §
§
Plaintiffs, §
§
V. §
§
TIMEKEEPERS, INC., TIER ONE SECURITY, §
INC., RABBIT EAR MANAGEMENT, INC., §
AND SHAWN FLUITT, §
§
Defendants. §

Civ. No. 5:14-cv-193

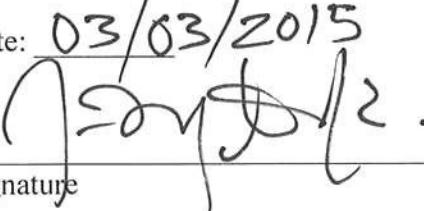
DECLARATION OF JOSE MONTES, JR.

1. My name is Jose Montes, Jr. I am over the age of eighteen (18), fully competent and capable to make this Declaration. All of the facts contained within this Declaration are true and correct and are based upon my personal knowledge.
2. I worked as a gate guard/security officer for Defendants Timekeepers, Inc., Tier One Security, Inc., Rabbit Ear Management, Inc., and Shawn R. Fluitt (collectively, "Defendants") from approximately May 2011 to November 2013. Defendants provide security and monitoring services, primarily to the oil and gas industry.
3. During my employment with Defendants, I routinely worked more than forty hours a week. I worked a minimum of four twelve-hour shifts per week. I often worked more than four twelve-hour shifts per week. As a gate guard/security officer, I was responsible for checking in and out all vehicles entering or exiting the work site on the vehicle log provided by Defendants.
4. However, Defendants classified me as an independent contractor and did not pay me time-and-one-half of my regular rate for hours that I worked over forty per week. Instead, Defendants paid me a flat daily rate of approximately \$300.00.
5. Defendants classify other gate guards/security officers as independent contractors as well and pay them a flat daily rate of approximately \$300. I know this because, after November 2013, Defendants promoted me to supervisor and I observed other gate guards/security officers work a similar schedule. Defendants routinely schedule gate guards/security officers to work a minimum of four twelve-hour shifts per week. All gate guards/security officers are

responsible for checking in and out all vehicles entering or exiting the work site on the vehicle log provided by Defendants.

6. A true and correct copy of a job description I received during my employment is attached hereto as Attachment A. Defendants set gate guards/security officers' work hours and work locations, including mine. Defendants train gate guards/security officers in safety and in Defendants' "accepted practices in field/ranch security procedures." Defendants supervise gate guards/security officers on a regular basis and are specifically required to meet, preferably weekly, with gate guards/security officers "to evaluate performance." Defendants also "prepare payroll" for gate guards/security officers and are permitted to immediately terminate gate guards/security officers whose "behavior and/or performance justifies such action." (See Attachment A). Defendants require gate guards/security officers to wear a company uniform.
7. Defendants supply gate guards/security officers with a generator, 200 gallon water tank, and septic. Defendants refill gate guards/security officers' water and fuel once a week. Defendants are also responsible for maintenance of all equipment. (See Attachment A).
8. A true and correct copy of a gate guard/security officer schedule for the week of July 14, 2014 is attached hereto as Attachment B. On this schedule, many gate guards/security officers are scheduled to work at least four or five twelve-hour shifts. They were not paid overtime for the hours they worked over forty. The schedule attached as Attachment B is a representative schedule; numerous other schedules also depict gate guards/security officers scheduled to work at least four or five twelve-hour shifts per week.
9. A true and correct redacted copy of a gate guard/security officer independent contractor application is attached here as Attachment C. In relevant part, the application requires that applicants for the "gate guard" position check a box which states, "Please check if you understand this is a 1099 contact [sic] position." (See Attachment C, page 2).
10. I am seeking to recover unpaid overtime pay from Defendants, and am seeking to have the Court authorize the plaintiffs to send notice to other gate guards/security officers who were classified by Defendants as independent contractors exempt from the overtime laws. I strongly suspect that many of the other gate guards/security officers for Defendants would also be interested in joining this lawsuit if they received notice and were given an opportunity to participate.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 03/03/2015

Signature

Jose A. Montes, Jr.
Full Legal Name (Print)